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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/501,571      | 04/27/2005  | Jean-Marie Mathias   | F2-5813             | 9320             |

44926 7590 11/03/2006

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| EXAMINER |
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WIEST, PHILIP R

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| ART UNIT | PAPER NUMBER |
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3761

DATE MAILED: 11/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|--------------------------------------|---------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/501,571 | <b>Applicant(s)</b><br>MATHIAS ET AL. |  |
|                              | <b>Examiner</b><br>Phil Wiest        | <b>Art Unit</b><br>3761               |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 July 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/23/05, 5/12/05</u> | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 and 8-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Rath et al. (US 4,235,412).

With respect to Claims 1, 4, 5 and 11 Rath et al. disclose a tube clamping device comprising a flexible body with a first leg 14 and a second leg 16 disposed in a general facing relationship. Said legs are moveable between a first (open) and second (closed) position. Rath et al. further disclose a pair of apertures (36 and 40) in the body for receiving a flexible tube 12, and at least one tube contacting member (46, 47, 48) for clamping the tube when the legs are in a closed position. See Figure 5. Regarding claim 4 and the last line of Claim 1, the clamp does not include means for readily releasing the legs from the closed position, meaning that it is capable of irreversibly sealing the legs together in a closed position to the same extent as Applicant's clamp. Regarding Claim 5, Rath et al. disclose that one leg comprises a lip 56 and the other comprises a hook 60 for engaging said lip in a closed position.

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With respect to Claims 2 and 3, Rath et al. disclose a tube clamping device wherein said first wall includes a pair of spaced apart walls (46 and 48) defining a slot (the area between), and said second wall includes an inwardly projecting extension 47. The movement of the legs to the closed position moves the extension 47 into said slot. See Figure 5.

With respect to Claims 8 and 10, Rath et al. disclose that the tube clamping device is made of a plastic material (Column 2, Lines 32-33). The apparatus is substantially free of any sharp ends or corners, as per Claim 10

With respect to Claim 9, Rath et al. disclose that tube contacting members (46, 47, and 48) are mounted on both legs (14 and 16) in order to clamp the tube 12 when the legs are in the closed position. See Figure 5.

With respect to Claim 11, Rath et al. discloses that the apertures of claim 1 are circular, and thus are adapted to completely surround a tube at the point where the tube extends through said aperture. Any circular aperture is capable of entirely surrounding a tube, given that the tube is the right size.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rath et al. in view of Baumdicker et al. (US 6,298,526). Rath et al. disclose a flow control clamp comprising a flexible body with a first leg 14 and a second leg 16 disposed in a general facing relationship, a pair of apertures (36 and 40) in the body for receiving a flexible tube 12, and at least one tube contacting member (46, 47, 48) for clamping the tube when the legs are in a closed position. Rath et al., however, do not disclose that said legs comprise a ball and socket for holding the clamp shut. Baumdicker et al. disclose a tether clip comprising a first and second leg (10 and 27) that are held together by a ball

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28 and socket 29. See Figures 1 and 2. Like the ball and socket in Applicant's invention, The locking system of Baumdicker et al. is shaped like a ball and socket when viewed from the axis of rotation, as shown in Figure 4. It would be obvious to one skilled in the art at the time of invention to modify the flow control clamp of Rath et al. with the ball and socket arrangement of Baumdicker et al. in order to provide an alternate, secure method for locking a flow control clamp in the closed position.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rath et al. in view of Takabayashi (US 4,038,726). Rath et al. disclose a flow control clamp comprising a flexible body with a first leg 14 and a second leg 16 disposed in a general facing relationship, a pair of apertures (36 and 40) in the body for receiving a flexible tube 12, and at least one tube contacting member (46, 47, 48) for clamping the tube when the legs are in a closed position. Rath et al., however, do not disclose that said legs comprise a notch and peg for holding the clamp shut. Takabayashi discloses a belt adjustment clamp comprising a first and second leg (see Figure 1) that are able to be locked together by a locking element that comprises peg 12 and notch 4. It would be obvious to one skilled in the art at the time of invention to modify the flow control clamp of Rath et al. with the peg and notch configuration of Takabayashi in order to provide an alternate, secure method for locking a flow control clamp in the closed position.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rath et al. in view of Oh et al. (US 5,062,846). Rath et al. disclose a flow control clamp comprising a flexible body with a first leg 14 and a second leg 16 disposed in a general facing relationship, a pair of apertures (36 and 40) in the body for receiving a flexible

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tube 12, and at least one tube contacting member (46, 47, 48) for clamping the tube when the legs are in a closed position. Rath et al., however, do not disclose that the spaced apart walls have different amounts of rigidity. Oh et al. discloses a plastic clip comprising a first and second leg (30 and 38) wherein the legs are of different thicknesses, implying varying rigidity (see Figure 2). It would be obvious to one skilled in the art at the time of invention to modify the flow control clamp of Rath et al. with the legs of varying thickness of Oh et al. in order to allow only one leg or wall to bend while moving the clamp into the closed position.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Buckman (US 3,942,228) discloses a tubing clamp comprising a flexible body, tube contacting members, a series of apertures, and a peg and notch to secure legs in a closed position.

Saliaria (US 4,053,135), Funk (US 5,203,056), and Kurtz et al. (US 4,589,626) disclose hose clamps, each comprising a flexible body made of two legs, a series of apertures, tube contacting members and a hook disposed to lock the clamp in a closed position. Furthermore, Saliaria discloses that the specific material of the clamp is polypropylene.

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Sussman (US 4,097,020) and Pino (US 4,764,996) disclose water saving devices, each comprising a hose clamp having a flexible body, tube contacting members, and a hook disposed to lock the clamp in a closed position.

Ohkaka (US 4807662) discloses a clamp comprising a pair of spaced apart walls defining a slot, wherein an extension from a leg is inserted into said slot to lock the clamp in a closed position.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phil Wiest whose telephone number is (571) 272-3235. The examiner can normally be reached on 8:30am-5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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JACQUELINE STEPHENS  
PRIMARY EXAMINER

PRW

10/25/2006